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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

12)
13 In re BEA SYSTEMS, INC. DERIVATIVE)
14 LITIGATION)
15)
16 This Document Relates To:)
All Actions)
Master File No. C-06-4459 (RMW)

**STIPULATION AND []
ORDER GRANTING LEAVE FOR
PLAINTIFFS TO FILE A SECOND
AMENDED CONSOLIDATED
COMPLAINT**

28 STIPULATION AND [] ORDER
GRANTING LEAVE FOR PLAINTIFFS TO FILE
A SECOND AMENDED CONSOLIDATED COMPLAINT

1 Pursuant to Federal Rule of Civil Procedure 15(a), Nominal Defendant BEA Systems,
2 Inc. (“BEA Systems”) and Defendants Thomas M. Ashburn, Carol A. Bartz, Barbara J. Britton,
3 Mark T. Carges, Sam Cece, Alfred S. Chuang, William T. Coleman, Mark P. Dentinger,
4 Matthew S. Green, Stewart K.P. Gross, William M. Klein, Ivan M. Koon, William H. Janeway,
5 Joseph H. Menard, Dean Morton, Tod Nielsen, Edward W. Scott, Jr., Robert A. Shipp and
6 Deborah Stanley (collectively, “Defendants”) and Representative Plaintiffs Musto Family Trust,
7 Vincent Musto, Trustee, George T. Barcheski and Catherine Molner (“Plaintiffs”), by and
8 through their respective counsel of record, hereby stipulate and agree that Plaintiffs will be
9 granted leave to file a Second Amended Consolidated Complaint. This stipulation is based on
10 the following facts:

11 WHEREAS, this action is a shareholder’s derivative action allegedly brought for the
12 benefit of nominal defendant BEA Systems against certain members of its Board of Directors
13 (the “Board”) and certain of its executive officers seeking to remedy defendants’ breaches of
14 fiduciary duties, unjust enrichment, statutory violations, and other violations of law;

15 WHEREAS, on March 12, 2007, Plaintiffs filed an Amended Consolidated Complaint
16 (“Amended Complaint”);

17 WHEREAS, on April 26, 2007, Defendants filed Motions to Dismiss the Amended
18 Complaint (“Motions to Dismiss”);

19 WHEREAS, by Order dated September 13, 2007, Plaintiffs’ opposition to Defendants’
20 Motions to Dismiss is due to be filed by November 6, 2007;

21 WHEREAS, on October 12, 2007, it was publicly announced that Oracle Corporation
22 (“Oracle”) had proposed to purchase BEA Systems for \$17.00 per share; and

23 WHEREAS, on October 12, 2007, BEA Systems rejected Oracle’s offer; and

24 WHEREAS, Plaintiffs have requested leave to file a Second Amended Consolidated
25 Complaint reflecting this proposed transaction and to include additional material information that
26 became available only after the filing of the Amended Complaint;

27

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1 WHEREAS, Defendants have not served a responsive pleading and do not oppose this
2 amendment;

3 WHEREAS, the amendment is not for the purpose of delay, promotes judicial efficiency,
4 and will not cause prejudice to any party.

5 THEREFORE, the parties stipulate, subject to the approval of the Court, that Plaintiffs shall be
6 granted leave to file a Second Amended Consolidated Complaint, which is attached hereto as
7 Exhibit A.

8 DATED: October 25, 2007

9 SCHUBERT & REED LLP

10 /s/ Aaron H. Darsky

11 Robert C. Schubert
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19 *Liaison Counsel for Plaintiffs*

20 *I, Aaron H. Darsky, am the ECF user whose ID and password are being used to file this
21 Stipulation and [Proposed] Order. In compliance with General Order 45, X.B., I hereby
22 attest that I have on file all holograph signatures for any signatures indicated by a "conformed"
23 signature (/S/) within this efiled document.*

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34 STIPULATION AND [] ORDER
35 GRANTING LEAVE FOR PLAINTIFFS TO FILE
36 A SECOND AMENDED CONSOLIDATED COMPLAINT

1
2
3 DATED: October 25, 2007

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15 *Counsel for Nominal Defendant BEA Systems,
16 Inc. and Defendants Thomas M. Ashburn, Carol
17 A. Bartz, Barbara J. Britton, Mark T. Carges,
18 Sam Cece, Alfred S. Chuang, William T.
19 Coleman, Mark P. Dentinger, Matthew S. Green,
20 Stewart K.P. Gross, William M. Klein, Ivan M.
21 Koon, William H. Janeway, Joseph H. Menard,
22 Dean Morton, Tod Nielsen, Edward W. Scott, Jr.,
23 Robert A. Shipp and Deborah Stanley*

24 * * *

25 **ORDER**

26
27 PURSUANT TO STIPULATION, IT IS SO ORDERED.

28 DATED: 11/2/07

Ronald M. Whyte
29 The Hon. Ronald M. Whyte
30 United States District Court Judge

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36 A SECOND AMENDED CONSOLIDATED COMPLAINT